

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 33508

STATE OF IDAHO,	)	2008 Unpublished Opinion No. 402
	)	
Plaintiff-Respondent,	)	Filed: March 20, 2008
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
JAMES AMOS BURDICK,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
	)	

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Appeal from the District Court of the Sixth Judicial District, State of Idaho, Franklin County. Hon. Don L. Harding, District Judge.

Judgment of conviction and unified sentence of twenty-five years, with a minimum period of confinement of ten years, for lewd conduct with a minor under sixteen, affirmed.

David E. Gabert, Pocatello, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

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PER CURIAM

James Amos Burdick was convicted of lewd conduct with a minor under sixteen, Idaho Code § 18-1508. The district court imposed a unified sentence of twenty-five years, with a minimum period of confinement of ten years. Burdick appeals, contending that the sentence is excessive.

Sentencing is a matter for the trial court's discretion. Both our standard of review and the factors to be considered in evaluating the reasonableness of a sentence are well established and need not be repeated here. *See State v. Hernandez*, 121 Idaho 114, 117-18, 822 P.2d 1011, 1014-15 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). When reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho

722, 726, 170 P.3d 387, 391 (2007). Applying these standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion.

Burdick also asserts that his sentence constitutes cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution and art. I, § 6 of the Idaho Constitution. To address this constitutional challenge, we must first make a threshold comparison of the crime committed and the sentence imposed to determine whether the sentence leads to an inference of gross disproportionality. *State v. Brown*, 121 Idaho 385, 394, 825 P.2d 482, 491 (1992). This “grossly disproportionate” test is equivalent to the standard under the Idaho Constitution enunciated in *State v. Evans*, 73 Idaho 50, 245 P.2d 788 (1952), which focuses upon whether the punishment is “out of proportion to the gravity of the offense committed, and such as to shock the conscience of reasonable [people].” *Brown*, 121 Idaho at 394, 825 P.2d at 491. If an inference of such disproportionality is found, we must conduct a proportionality analysis comparing Burdick’s sentence to those imposed on other defendants for similar offenses. *Id.* See also *State v. Matteson*, 123 Idaho 622, 626, 851 P.2d 336, 340 (1993). For purposes of this analysis, we treat the fixed portion of the sentence, ten years, as the term of confinement. *Id.*

The offense to which Burdick pleaded guilty is lewd conduct with a minor under sixteen. This offense is sufficiently serious that we cannot say that the unified twenty-five-year sentence with ten years determinate is all out of proportion to the gravity of the offense or such as to shock the conscience of reasonable people. Consequently, we do not proceed with a further proportionality review.

Therefore, Burdick’s judgment of conviction and sentence are affirmed.